

ORIGINAL

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FILED

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

KEVIN LAMAR,

Plaintiffs,

v.

PATENAUE & FELIX, A.P.C.,

Defendant.

Case No.:

C11-05593

COMPLAINT AND DEMAND FOR
JURY TRIAL

(Unlawful Debt Collection Practices)

VERIFIED COMPLAINT

KEVIN LAMAR (Plaintiff), by attorneys, KROHN & MOSS, LTD., alleges the
following against PATENAUE & FELIX, A.P.C. (Defendant):

INTRODUCTION

- Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. 1692 et seq. (FDCPA).
- Count II of the Plaintiff's Complaint is based on Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788 et seq. (RFDCPA).

JURISDICTION AND VENUE

- Jurisdiction of this court arises pursuant to 15 U.S.C. 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy," and 28 U.S.C. 1367 grants this court supplemental jurisdiction over the state claims contained therein.

1 4. Defendant conducts business in the state of California, and therefore, personal
2 jurisdiction is established.

3 5. Venue is proper pursuant to 28 U.S.C. 1391(b)(2).

4 **PARTIES**

5 6. Plaintiff is a natural person residing in Hayward, Alameda County, California.

6 7. Plaintiff is a consumer as that term is defined by 15 U.S.C. 1692a(3), and according to
7 Defendant, Plaintiff allegedly owes a debt as that term is defined by 15 U.S.C. 1692a(5)
8 and Cal. Civ. Code § 1788.2(h).

9 8. Defendant is a debt collector as that term is defined by 15 U.S.C. 1692a(6) and Cal. Civ.
10 Code §1788.2(c), and sought to collect a consumer debt from Plaintiff.

11 9. Defendant is a national company with its headquarters in San Diego, San Diego County,
12 California.

13 10. Defendant acted through its agents, employees, officers, members, directors, heirs,
14 successors, assigns, principals, trustees, sureties, subrogees, representatives, and
15 insurers.

16 **FACTUAL ALLEGATIONS**

17 11. Defendant constantly and continuously places collection calls to Plaintiff seeking and
18 demanding payment of an alleged debt originally owed to Dell Financial.

19 12. Defendant calls Plaintiff up to four (4) times per day for approximately the past three (3)
20 months.

21 13. Defendant calls Plaintiff on her cell phone and home phone.

22 14. Defendant yelled and screamed at Plaintiff.

23 15. Defendant threatened Plaintiff with legal action. To date, no lawsuit has been filed
24 against Plaintiff by Defendant.
25

COUNT I
DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

16. Defendant violated the FDCPA based on the following:

- a. Defendant violated §1692d of the FDCPA by engaging in conduct of which the natural result is the abuse and harassment of the Plaintiff.
- b. Defendant violated §1692d(5) of the FDCPA by causing a telephone to ring repeatedly and continuously with the intent to annoy, abuse, and harass Plaintiff.
- c. Defendant violated §1692e of the FDCPA by using false, deceptive or misleading representation or means in connection with the debt collection.
- d. Defendant violated §1692e(5) of the FDCPA by threatening legal action against Plaintiff. To date no lawsuit has been filed against Plaintiff by Defendant.
- e. Defendant violated §1692e(10) of the FDCPA by using false representation or deceptive means to collect a debt.

HEREFORE, Plaintiff, KEVIN LAMAR, respectfully requests judgment be entered against Defendant, PATENAUDE & FELIX, A.P.C., for the following:

17. Statutory damages of \$1,000.00 pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. 1692k,
18. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. 1692k
19. Any other relief that this Honorable Court deems appropriate.

COUNT II
DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

20. Plaintiff repeats and re-alleges all of the allegations in Count I of Plaintiff's Complaint

as the allegations in Count II of Plaintiff's Complaint.

21. Defendant violated the RFDCPA based on the following:

- a. Defendant violated §1788.11(d) of the RFDCPA by causing Plaintiff's telephone to ring repeatedly and continuously so as to annoy Plaintiff.
- b. Defendant violated §1788.11(e) of the RFDCPA by placing collection calls to Plaintiff with such frequency that was unreasonable and constituted harassment
- c. Defendant violated the §1788.17 of the RFDCPA by continuously failing to comply with the statutory regulations contained within the FDCPA, 15 U.S.C. § 1692 et seq. to wit: Sections 1692(c) and 1692d.

WHEREFORE, KEVIN LAMAR, respectfully requests judgment be entered against Defendant, PATENAUDE & FELIX, A.P.C., for the following:

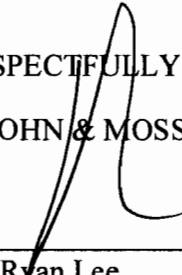
22. Statutory damages of \$1000.00 pursuant to the Rosenthal Fair Debt Collection Practices Act, *Cal. Civ. Code §1788.30(b)*,
23. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection Practices Act, *Cal. Civ Code § 1788.30(c)*, and
24. Any other relief that this Honorable Court deems appropriate.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, KEVIN LAMAR, demands a jury trial in this case.

DATED: November 14, 2011

RESPECTFULLY SUBMITTED,
KROHN & MOSS, LTD.

By: 
Ryan Lee
Attorney for Plaintiff

1 **VERIFICATION OF COMPLAINT AND CERTIFICATION**

2 STATE OF CALIFORNIA

3 Plaintiff, KEVIN LAMAR, states as follows:

- 4 1. I am the Plaintiff in this civil proceeding.
- 5 2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe
- 6 3. I believe that this civil Complaint is well grounded in fact and warranted by existing
- 7 4. I believe that this civil Complaint is not interposed for any improper purpose, such as
- 8 5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
- 9 that all of the facts contained in it are true, to the best of my knowledge, information
- 10 and belief formed after reasonable inquiry.
- 11 law or by a good faith argument for the extension, modification or reversal of existing
- 12 law.
- 13 to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a
- 14 needless increase in the cost of litigation to any Defendant(s), named in the
- 15 Complaint.

16 Pursuant to 28 U.S.C. § 1746(2), I, KEVIN LAMAR, hereby declare (or certify,

17 verify or state) under penalty of perjury that the foregoing is true and correct.

18 DATE: 10/26/2011

19 
20 KEVIN LAMAR